
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UTAH REPUBLICAN PARTY,

Plaintiff,

CONSTITUTION PARTY OF UTAH, a
registered political party of Utah,

Plaintiff and Intervenor,

v.

GARY R. HERBERT, in his Official Capacity
as Governor of Utah, and SPENCER J. COX,
in his Official Capacity as Lieutenant Governor
of Utah,

Defendants.

**ORDER STRIKING [167] MOTION FOR
SUMMARY JUDGMENT AND [168]
CORRECTED MOTION FOR SUMMARY
JUDGMENT**

Case No. 2:14-cv-00876-DN-DBP

Judge David Nuffer
Magistrate Judge Dustin B. Pead

Dispositive motions were due on September 21, 2015.¹ That deadline was set in February 2015, based on the need to resolve this case in a timely manner, hopefully before the start of the 2016 Utah Legislative Session. A shortened schedule for briefing and argument was set at that hearing with many other deadlines.

On September 21, 2015 at 11:59 p.m., after the other parties had timely filed their dispositive motions, the Utah Republican Party filed a motion² to extend the dispositive motion deadline for one day. The court granted the motion, but warned that “failure to file the motion

¹ Scheduling Order, [docket no. 43](#), filed February 17, 2015.

² Plaintiff’s Motion to Enlarge Time to File Motion for Summary Judgment, [docket no. 165](#), filed September 21, 2015.

today [September 22] will result in any late-filed motion being stricken and entirely disregarded.”³ Nothing was filed on September 22, 2015.

On September 23, 2015 at 12:02 a.m., the Utah Republican Party filed a motion for summary judgment.⁴ It contained 38 pages and did not include exhibits. At 1:44 p.m. on September 23, without leave of court, and without any motion for leave, the Utah Republican Party filed a “corrected” motion for summary judgment.⁵ The “corrected” motion was a total of 288 pages including exhibits. Because Plaintiff’s counsel was clearly warned about failure to meet the September 22 deadline, and because this is not the first, second, third, or even tenth time Plaintiff’s counsel had missed a deadline in this case, the following items are stricken and will not be considered:

- Plaintiff’s motion for summary judgment;⁶
- Plaintiff’s “corrected” motion for summary judgment;⁷ and
- Plaintiff’s Appendix to the “corrected” motion for summary judgment.⁸

This is not the first time Plaintiff’s counsel has failed to meet a deadline. Attached to this Order is a table of missed deadlines, with corresponding docket entries, showing Mr. Mumford’s repeated failure to comply with deadlines. Sometimes these missed deadlines were already extended to a date Mr. Mumford proposed, as is the case in the instant failure.

³ Docket Text Order, docket no. 166, entered September 22, 2015.

⁴ Plaintiff Utah Republican Party’s Motion for Summary Judgment, [docket no. 167](#), filed September 23, 2015.

⁵ [Corrected] Plaintiff Utah Republican Party’s Motion for Summary Judgment, [docket no. 168](#), filed September 23, 2015.

⁶ Plaintiff Utah Republican Party’s Motion for Summary Judgment, [docket no. 167](#), filed September 23, 2015.

⁷ [Corrected] Plaintiff Utah Republican Party’s Motion for Summary Judgment, [docket no. 168](#), filed September 23, 2015.

⁸ Appendix of Exhibits in Support of the Utah Republican Party’s Motion for Summary Judgment, [docket no. 169](#), filed September 23, 2015.

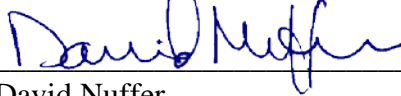
ORDER

IT IS HEREBY ORDERED that Plaintiff's motion for summary judgment⁹ is STRICKEN AND DISREGARDED, per the court's [166] docket text order.

IT IS FURTHER ORDERED that Plaintiff's "corrected" motion for summary judgment,¹⁰ along with Plaintiff's Appendix to the "corrected" motion for summary judgment,¹¹ are STRICKEN AND DISREGARDED, per the court's [166] docket text order.

Dated September 23, 2015.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer
United States District Judge

⁹ Plaintiff Utah Republican Party's Motion for Summary Judgment, [docket no. 167](#), filed September 23, 2015.

¹⁰ [Corrected] Plaintiff Utah Republican Party's Motion for Summary Judgment, [docket no. 168](#), filed September 23, 2015.

¹¹ Appendix of Exhibits in Support of the Utah Republican Party's Motion for Summary Judgment, [docket no. 169](#), filed September 23, 2015.

2:14-cv-00876, *Utah Republican Party v. Herbert***List of missed deadlines by Attorney Marcus Mumford**

	Originally due on:	
Initial Disclosures	2/9 ([38] at 2)	Not provided to opposing counsel until 2/17 [44], disclosures were “inadequate” [44]
Meet and confer regarding scheduling order	2/13 @ 11:00am (<i>see</i> [39])	Mumford late to the meeting [39]
Submit <i>single</i> redlined scheduling order	Before 2/17 hearing (<i>see</i> [37])	Instead of submitting a single order, Mumford filed a separate redline copy [40] in addition to the copy already submitted by the State [39]
		<u>2/24</u> : In an order deferring ruling on the State’s [44] motion to expedite/compel supplemental disclosures, Magistrate Judge Pead notes concern with tenor of the litigation and requests parties act with civility and try to resolve dispute on their own. [46]
		<u>2/27</u> : State lists “four separate occasions” on which it attempted to meet and confer with Mr. Mumford regarding disclosures, but received no response from Mr. Mumford, and no cure of deficiencies in disclosures. State requests that the court rule on [44] motion to expedite/compel. [51] Order GRANTED [44] motion, <i>see</i> [56], requiring Mumford to supplement the deficient disclosures he had failed to give the State earlier.
Opposition to Motion to Quash	4/14 [105]	Court entered order [106] on 4/15 granting MTQ.
		<u>4/15</u> : Mumford filed motion to reopen MTQ [108]. Motion denied by [120] Order.
Reply to PI	4/7 @ 2:00 p.m. [74]	Filed 4/7 @ midnight. An email was sent by chambers to Mr. Mumford regarding the missed deadline on 4/7. Mumford responded: “I apologize for my late filing. It killed me that I did not meet the court’s deadline yesterday. I will adhere to the court’s deadlines in the future.” Email from Mumford to Chambers, 4/8/15 at 10:12AM.
Objections to Magistrate Decision	5/11 [115]	Filed 5/13 ; Court extended deadline to 5/12 in [125] Order per motion from Mumford [124], yet filing still came in a day after that.
Opposition to MJP	5/14 [109]	Filed 5/16 ; Court extended deadline to 5/15 in [129] Order per motion from Mumford [127], yet filing still came in a day after that.

Review and respond to draft proposed order	6/19 [140]	Filed 6/22 ; Mumford asked in motion [141] for more time to review and respond to the draft, court granted motion in [142] Order on 6/22 “without commenting on Plaintiff’s counsel’s numerous failures to comply with deadlines and orders”
Objections to “reconciled” draft	7/17 [140]	Filed 7/22 ; [147] Notice at 1, n. 2 says the objections “are being filed concurrently with a motion to accept late brief, a motion to compel discovery, and a motion to extend the discovery cut-off in this matter.” None of these motions were filed.
Retraction of statement in [141] that State “omitted the email Plaintiff’s counsel sent at approximately 7:31 a.m.”	7/2 ([149] at 3)	[149] filing explains that Mumford had stated in prior filing with the court that he had drafted an email and sent it to opposing counsel “at approximately 7:31 a.m., on the morning of June 16, 2015,” but at a meet and confer on 7/2/15, Mumford admitted that he never drafted such email and would file a retraction. Retraction was never filed.
Motion to accept late brief, motion to compel discovery, motion to extend discovery cut-off	Not ordered; Mumford stated would be filed with [147]	Mumford filed [147] objection to reconciled draft of PI order representing motion to accept late brief, motion to compel discovery, motion to extend discovery cut-off was filed concurrently. None of these motions were filed.
Dispositive Motion deadline	9/21 (dispositive motion deadline set in [43], on 2/17/15)	Filed 9/23 ; Court extended deadline in [166] Order to 9/22 per motion from Mumford [165]. Court stated that “failure to file the motion today (9/22) will result in any late-filed motion being stricken and entirely disregarded.” [166].
Amended Motion for Summary Judgment	9/21 (dispositive motion deadline set in [43], on 2/17/15)	Amended (“corrected”) motion filed without leave of Court at 1:44 p.m. with numerous exhibits not included in earlier motion.